ESTTA Tracking number:

ESTTA498519

Filing date:

10/05/2012

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91206730
Party	Defendant Cinnabar Ventures Inc.
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Submission	Answer
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Date	10/05/2012
Attachments	Yippy Answer _FINAL 10 5 12pdf ( 5 pages )(33282 bytes )

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# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application No. 77/936,091; filed February 15, 2010

Yahoo!, Inc. : Opposition No.: 91206730

Opposer : Serial No.: 77/936,091

v. : Mark:

Cinnabar Ventures, Inc.

Applicant.

#### **ANSWER**

Applicant, Cinnabar Ventures, Inc. a.k.a. Yippy ("Yippy" and/or "Applicant"), by and through its undersigned counsel, by way of Answer and Affirmative Defenses to the Opposition brought by Yahoo!, Inc. ("Yahoo" and/or "Opposer"), states as follows (Applicant's Answer numbered paragraphs correspond to Opposer's Opposition numbered paragraphs):

With respect to the introductory paragraph, Yippy lacks knowledge and information regarding the Yahoo entity and therefore denies all assertions related thereto. Yippy denies that

Opposer is being or will be damaged in any way as a result of registration of the mark which is the subject of Application Serial No. 77/936,091 and therefore believes Opposer has no

grounds to oppose.

- 1. Yippy lacks knowledge and information sufficient to form an opinion as to the truth or falsity of the allegations in Paragraph 1 and therefore denies.
- 2. Yippy admits that Yahoo's services "are available on PCs and other devices," but lacks knowledge or information sufficient to form an opinion as to the truth or falsity of what such other devices might include and therefore denies. Yippy denies that Yahoo "is the premier digital media company." Yippy lacks knowledge or information sufficient to form an opinion as to the truth or falsity of the remaining allegations in Paragraph 2 and therefore denies.
- 3. Yippy lacks knowledge or information sufficient to form an opinion as to the truth or falsity of the allegations in Paragraph 3 and therefore denies.
- 4. Yippy lacks knowledge or information sufficient to form an opinion as to the truth or falsity of the allegations in Paragraph 4 and therefore denies.
- 5. Yippy lacks knowledge or information sufficient to form an opinion as to the truth or falsity of the allegations in Paragraph 5 and therefore denies.
- 6. Yippy lacks knowledge or information sufficient to form an opinion as to the truth or falsity of the allegations in Paragraph 6 and therefore denies.
- 7. Denied.
- 8. Yippy denies that the Yahoo! Stylized Mark is one of the most recognized brands in the world. Yippy lacks knowledge or information sufficient to form an opinion as to the truth or falsity of the remaining allegations in Paragraph 8 and therefore denies.

- 9. Yippy lacks knowledge or information sufficient to form an opinion as to the truth or falsity of the allegations in Paragraph 9 and therefore denies.
- 10. Yippy lacks knowledge or information sufficient to form an opinion as to the truth or falsity of the allegations in Paragraph 10 and therefore denies.
- 11. Denied.
- 12. Denied

## Applicant and its Application

- 13. Admitted, but noted that Cinnabar Ventures, Inc. changed its name to Yippy, Inc.
- 14. Admitted.

### Likelihood of Confusion, 15 U.S.C. §1052(d)

- 15. Yippy incorporates by reference the responses made to the preceding paragraphs.
- 16. Denied.
- 17. Denied.
- 18. Denied.
- 19. Denied.

### **Dilution, 15 U.S.C. §1125(c)(1)**

- 20. Yippy incorporates by reference the responses made to the preceding paragraphs.
- 21. Denied.
- 22. Denied.

All allegations in Opposer's Opposition not specifically admitted or otherwise addressed above are hereby denied.

### **AFFIRMATIVE DEFENSES**

- 1. The Opposition, in part, fails to set forth a cause upon which relief can be granted.
- 2. The Opposition is barred by Opposer's unclean hands.
- 3. The Opposition is barred by the doctrine of waiver.
- 4. The Opposition is barred by the doctrine of estoppel.
- 5. The Opposition is barred by Opposer's acquiescence in Applicant's use.
- 6. The Opposition is unsustainable as a matter of law because Yippy's mark is not likely to cause confusion with any of the Yahoo! and Y! Marks (as defined in Opposer's Opposition).
- 7. Opposer's claim, as it relates to the letter "y" when used with an exclamation point, is barred, as Opposer cannot claim the letter "y" and an exclamation point exclusively for itself, and thus, effectively, remove the "y!" combination from the public domain, and deprive competitors and others of a fundamental and generic communicative device essential to the dissemination of information to consumers.
- 8. Opposer's claim, as it relates to the fame of the letter "y" when used with an exclamation point, is barred, as Opposer cannot sustain a claim that the letter "y" and an exclamation point can acquire the necessary fame to sustain its causes of action because of the fundamental and generic qualities of a basic communicative device essential to the dissemination of information to consumers.

WHEREFORE, Applicant respectfully requests that the Board dismiss this Opposition proceeding in its entirety.

Respectfully submitted,

\_/S/ Christopher J. McHattie\_

Christopher J. McHattie, Esq. The McHattie Law Firm, LLC 550 West Main Street Boonton, New Jersey, 07005 cmchattie@mchattielaw.com jbaldini@mchattielaw.com jzalon@zalonoffice.com 973.402.5505 Attorneys for Applicant Cinnabar Ventures, Inc.

Dated: October 5, 2012

#### **CERTIFICATION OF SERVICE**

I, Jack B. Baldini, hereby certify as follows:

- 1. I am attorney at law admitted to practice in the State of New Jersey with offices at 550 West Main Street, Boonton, New Jersey 07005.
- 2. On October 5, 2012 I served a copy of: Applicant's Answer and Affirmative Defenses on: Whitney D. Cooke, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, 901 New York Avenue, N.W., Washington, D.C., 20001-4413via first class mail and by filing same with the Trademark Trial and Appeal Board utilizing the ESTTA System.

I declare under penalty of perjury that the foregoing statements are true and correct.

By: <u>/s/ Jack Baldini</u> JACK B. BALDINI, ESQ.

Dated: Friday, October 05, 2012